

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition for Expedited Declaratory Ruling
Regarding Application of Sections 201(b)
And 203(c) To Underlying Carrier's
Practices and Charges

WC Docket No. 09-28

REPLY COMMENTS OF OLS, INC. AND TELEUNO, INC.

Charles H. Helein
Allison D. Rule
Jacqueline R. Hankins
HELEIN & MARASHLIAN, LLC
The *Comm*Law Group
1483 Chain Bridge Road, Suite 301
McLean, Virginia 22101

September 15, 2009

Attorneys for OLS, Inc. and TeleUno, Inc.

I. Introduction

On or about August 18, 2005, Global Crossing Bandwidth, Inc. ("Global Crossing")¹ filed suit against OLS, Inc. and TeleUno, Inc. ("Petitioners") in the U.S. District Court for the Western District of New York ("Court") seeking over \$1.3 million in damages including minimum usage fees and termination charges.² Global Crossing and Petitioners filed Cross-Motions for Summary Judgment with the Court. Petitioners argued that Global Crossing's collection of invalid charges, unilateral rejection of disputed invoices, threats of disconnection, failure to issue promised credits, and insistence on Minimum Monthly Usage Charges ("MMUCs") - despite Petitioners' aggregate attainment of minimum usage commitments - violated the Federal Communications Act, 47 U.S.C. §§ 151 *et seq.*, as amended ("FCA"). Thereafter, on July 9, 2008, the Court issued a Decision and Order, which held that the disputed MMUCs were valid and enforceable under New York law and the FCA, but failed to address several of Petitioners' substantive counterclaims.

On September 19, 2008, Petitioners filed a Petition for Declaratory Ruling ("Petition") with the Federal Communications Commission ("FCC" or "Commission").³ Therein, Petitioners sought a declaratory ruling identifying as unreasonable - in violation of Section 201(b) of the FCA - a wholesale carrier's practices of failing to abide by dispute procedures, assessing invalid

¹ The term "Global Crossing" is also used herein to refer to Global Crossing Telecommunications, Inc., parent company of Global Crossing Bandwidth, Inc.

² See *Global Crossing Bandwidth, Inc. v. OLS, Inc., et. al.*, 05CV6423(L/F), U.S. Dist. Ct. Western District of New York.

³ *In the Matter of Petition for Expedited Declaratory Ruling Regarding Application of Sections 201(b) and 203(c) to Underlying Carrier's Practices and Charges*, OLS, Inc. and TeleUno, Inc.'s Petition for Declaratory Ruling that Global Crossing Bandwidth, Inc.'s Practices and Charges are Unreasonable Practices in Violation of Sections 201(b) and 203(c) of the Communications Act, filed Sept. 19, 2008.

fees and threatening disconnection without payment thereof, fraudulently promising forgiveness of disputed charges, and demanding minimum usage charges for services not rendered. Further, Petitioners sought declaratory rulings that a carrier's practice of demanding MMUCs despite a customer's exceeding the charges in the aggregate likewise violates Section 201(b); and that billing for services never provided violates Section 203(c) of the FCA.

Because no action was taken on the Petition, Petitioners resubmitted the original Petition with a request for expedited review on April 9, 2009.⁴ On August 11, 2009, the Commission issued a Public Notice seeking comments on the Petition.⁵ Excite Telecom Inc. ("Excite") and Global Crossing Telecommunications, Inc. ("Global Crossing") filed comments in response to the Petition. Petitioners hereby respond to these comments as follows.

II. Petitioners' Request is Ripe and Proper

In its comments to the Petition, Global Crossing accuses Petitioners of seeking a second "bite at the apple."⁶ Global Crossing challenges Petitioners' right to seek FCC intervention at this stage of the parties' dispute.⁷ Global Crossing relies heavily upon the Court's holding in its

⁴ *In the Matter of Petition for Expedited Declaratory Ruling Regarding Application of Sections 201(b) and 203(c) to Underlying Carrier's Practices and Charges*, OLS, Inc.'s and TeleUno Inc.'s Petition for Expedited Declaratory Ruling that Global Crossing Bandwidth, Inc.'s Practices and Charges are Unreasonable Practices in Violation of Sections 201(b) and 203(c) of the Communications Act, filed Apr. 9, 2009.

⁵ Public Notice, DA 09-1788, Pleading Cycle Established for Petition of OLS, Inc. and TeleUno, Inc. for Declaratory Ruling on Application of Sections 201(b) and 203(c) to Carrier Practices and Charges, WC Docket No. 09-28 (Rel. Aug. 11, 2009).

⁶ *In the Matter of Petition of OLS, Inc. and TeleUno, Inc. for Declaratory Ruling on Application of Sections 201(b) and 203(c) to Carrier Practices and Charges*, WC Docket No. 09-28, Comments of Global Crossing Telecommunications, Inc., filed Sept. 1, 2009 ("Global Crossing Comments") at 2, 9, 15.

⁷ See, e.g., Global Crossing Comments at 9.

Decision and Order that the MMUCs assessed by Global Crossing were valid and enforceable.⁸ But, Global Crossing misconstrues Petitioners' arguments. Petitioners' disagreement with Global Crossing's MMUCs extends beyond mere complaint regarding their enforceability under state law. The FCA supersedes state law, and the issue presented to the Commission in the Petition is Global Crossing's violations of the FCA.⁹ As is more fully discussed below, Petitioners will demonstrate that the MMUCs stemmed from services never rendered. Further, Global Crossing promised to forgive disputed MMUCs in exchange for contract extensions, but Global Crossing cancelled the promised credits shortly before it threatened to terminate Petitioners' services for non-payment of the very charges Global Crossing had agreed to forgive.

In its Decision and Order, the Court neglected to address several of Petitioners' counterclaims relating to the FCA and other matters within the expertise of the FCC. To the extent the Court did rule on matters pertaining to state and federal law asserted in Petitioners' Cross Motion, Petitioners respectfully disagree, and intend to appeal these decisions according to the rules of the Court. Notwithstanding Petitioners' right and intent to appeal the Court's decision, the FCA fully entitles Petitioners to seek redress with the Commission. The Court's ruling contradicted applicable law, and as the expert body, the FCC should intervene. The FCC's expertise includes matters related to the FCA and other telecommunications-related disputes. The Commission, therefore, is the expert body before which Petitioners are rightfully authorized to bring claims regarding such issues. In other words, the Court's rejection of Petitioners' FCA claim relating to the MMUCs is immaterial. Petitioners are entitled to

⁸ Global Crossing Comments at 4-8.

⁹ Note, although not an issue in this proceeding, Petitioners maintain that the Court erred in its holding on state law grounds.

unbiased review by the expert federal agency charged with enforcement of the FCA. When carriers subject to the FCC's regulatory authority provide services in an unreasonable manner in violation of the FCA, customers maintain an absolute right to pursue their claims with the Commission.

Petitioners respectfully disagree with the Court's conclusion that their request for Commission review stems from a claim that the Court simply "got it wrong."¹⁰ Rather, claims relating to violations of Sections 201(b) and 203(c) properly "involve technical or policy considerations" within the FCC's "particular field of expertise."¹¹ Clearly, therefore, these matters properly lie within the Commission's discretion. In other words, Petitioners do not seek a second bite at the apple, but proper invocation of an expert agency's duty to declare law in order to remove uncertainty and avoid conflict in the law. Moreover, Petitioners sought FCC intervention in this matter as soon as the Court's ruling made it clear that it created a conflict with the requirements of the FCA and long-standing Commission policies.

Global Crossing alleges that the Petition does not present a proper subject for a declaratory ruling because the issues addressed raise no controversy or uncertainty.¹² Global Crossing relies upon a district court ruling, subject to FCC review in the *HOLD Order*.¹³ Specifically, Global Crossing asserts that because the district court, in that case, reserved

¹⁰ Global Crossing Comments at 7; 2009 US Dist LEXIS 22402 (W.D.N.Y. March 19, 2009) at *14.

¹¹ *Ellis v. Tribune Television Co.*, 443 F.3d 71, 82-83 (2d Cir. 2006) (citing *Nat'l Commc'ns Ass'n., Inc. v. AT&T Co.*, 46 F.3d 220, 222 (2d Cir.1995)).

¹² Global Crossing Comments at 8.

¹³ *In the Matter of Petition of Home Owners Long Distance, Inc. for a Declaratory Ruling that WorldCom Cannot Limit Its Liability for Gross Negligence or Other Willful Misconduct Through its Interstate Tariffs*, Order, 14 FCC Rcd. 17139 (1999) ("*HOLD Order*"); Global Crossing Comments at 9-10.

judgment on the issue presented to the FCC, and because the FCC declined to issue the requested declaratory ruling, the *HOLD Order* supports Global Crossing's position that the Commission should dismiss the Petition.¹⁴

Again, Global Crossing misconstrues Petitioners' claims. Petitioners cited the *HOLD Order* as the standard for referral of a petition to the Commission in light of pending litigation on the matter. In other words, Petitioners' reference to the *HOLD Order* is limited to its enunciation of the Commission's standard for determining whether to reach the merits of a petition involved in pending litigation. Petitioners cited the *HOLD* standard to demonstrate the ripeness of their Petition for review. In the *HOLD Order*, the Commission announced that it would rule on a plaintiff's pending petition if appropriate "to terminate a controversy or remove uncertainty."¹⁵ Because a Commission decision on the issues presented by Petitioners in the present case will assist in resolving a controversy between Global Crossing and Petitioners - namely whether Global Crossing has committed unreasonable practices in violation of Sections 201(b) and 203(c) - pursuant to the *HOLD* standard, the Commission's exercise of discretion to rule on the Petition is proper.

III. Minimum Monthly Usage Charges ("MMUCs")

Global Crossing next attempts to reduce the parties' dispute to a mere contractual disagreement. It defines the MMUCs as simple monthly commitments that Petitioners agreed to but failed to meet.¹⁶ Global Crossing's misleading characterization fails to capture the essence of Petitioners' objections to Global Crossing's practices. The illegality of the MMUCs is

¹⁴ Global Crossing Comments at 9-10.

¹⁵ *HOLD Order* at para. 12.

¹⁶ Global Crossing Comments at 10-12.

not simply based upon a breach of contract theory. The MMUCs are improper because they violate the FCA and public policy in connection with communications services that were never rendered. At issue is the reasonableness of Global Crossing's MMUC charges and its manipulation and administration thereof, not the simplistic notion that MMUCs may, in proper circumstances, be reasonable. Under the facts of this matter, that Petitioners "fell short" of their monthly minimums is wholly irrelevant. In the aggregate, they more than met their commitments. They paid for all services actually rendered. Having paid more than the commitment required under the contract as fully performed, under FCA standards, Global Crossing- as a regulated communications carrier- cannot collect additional charges for which no services were rendered and no costs incurred. In this context, Global Crossing's MMUCs are pure profit, an unearned windfall. This result contradicts the public interest, as Commission policy has limited carriers to recouping their unrecoverable costs arising from early termination or the difference in discounted rates based on minimum commitments versus the undiscounted rates for which no such commitments were made.

Further, the MMUCs do not represent a reasonable estimate of lost profits. Global Crossing lost no profits during the performance of its agreements with Petitioners because Petitioners met their aggregate commitment level. Because Global Crossing lost no profits, it cannot prove entitlement to damages. Section 203 clearly does not permit carriers to charge for services not rendered, for which no costs were incurred or to use such charges to penalize customers that refuse or are unable to accede to other unreasonable demands. In short, carrier charges cannot be used as a weapon against customers. Thus, any attempt to collect MMUCs on such a basis is an unreasonable and unlawful practice in violation of Section 201(b).

To the extent the Court's ruling is contrary to Petitioners' position on MMUCs, Petitioners respectfully disagree. Specifically, the Court held that the FCC's decision in *Ryder* governs examinations of the reasonableness of all minimum usage/termination fee contracts.¹⁷ However, in *Ryder*, the FCC limited the applicability of its decision to the facts of that particular case. *Ryder* does not unilaterally sanction all minimum usage fee agreements without case-by-case review. In *Ryder*, the Commission focused on the existence of a *quid pro quo* arrangement between the parties that rendered the MMUCs at issue valid and enforceable.¹⁸ The Court, in this case, failed to conduct such an analysis, and therefore, its ruling is improper. Further, the Court's expansion of *Ryder* beyond the FCC's intended scope increases the risk of inconsistent rulings rendering a determination about the application of *Ryder* to the present case most appropriately within the FCC's discretion.

IV. Global Crossing's Pattern of Unlawful Behavior

A. Violations of Section 201(b)

Moreover, Petitioners' request for declaratory ruling is not limited to the unreasonableness of the MMUCs. Global Crossing's assertion that "the Court has resolved the significant issues between the parties on which petitioners seek declaratory relief" is baseless.¹⁹ The Court failed to rule on several of Petitioners' claims which extend beyond the validity of the MMUCs. As Petitioners have shown, Global Crossing engaged in a pattern of unfair and arbitrary business practices, including knowingly rendering inflated invoices, misrepresenting

¹⁷ *In re Ryder Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 18 F.C.C.R. 13603 (2003).

¹⁸ *Ryder*, 18 F.C.C.R. at 13614-615.

¹⁹ Global Crossing Comments at 2.

its dispute procedures - including concealing the fact that it has no policies governing disputes and publishes no standards by which disputes are to be evaluated, making fraudulent promises of credits in return for contract extensions, assessing invalid termination charges, and assessing invalid Late Payment Charges ("LPCs") in addition to charging unlawful MMUCs. Global Crossing imposed many of the disputed MMUCs after breaching its contracts with Petitioners and making false promises of credits for the same, rendering the assessment thereof unlawful. Global Crossing used these unlawful charges to coerce concessions and contract extensions from Petitioners. Further, Global Crossing ultimately terminated Petitioners' service and assessed the invalid MMUCs, thereby benefiting from its own unreasonable and unlawful practices.

Global Crossing ignored contractual dispute procedures, unilaterally and unreasonably rejected Petitioners' invoice disputes and extracted unfair payments from Petitioners. Further, Global Crossing promised to forgive disputed amounts in exchange for Petitioners' extension of the parties' contracts.²⁰ Petitioners agreed to such extensions, in reliance upon Global Crossing's promise to forgive the disputed charges. Global Crossing, however, failed to credit Petitioners' accounts accordingly. In addition to failing to issue the credits promised, Global Crossing never disclosed that it had internally approved the credit and then rescinded the credit in an attempt to justify the termination of Petitioners' service. This pattern of fraud continued throughout the term of the parties' agreements. Eventually, Petitioners were forced to migrate

²⁰ Notably, during the litigation, Global Crossing alternately denied having made any such promises to credit the MMUCs and/or claimed that any such representations were made without proper authority. However, during discovery, Global Crossing recently produced internal emails clearly documenting that such credits were not only promised, but approved. See Exhibit A attached hereto.

their customers to a new carrier, resulting in a loss of 50% of their customers and the incurrence of regulatory fees and charges imposed by local carriers to switch customers to other underlying carriers' networks.

The Court failed to unequivocally rule on Petitioners' claims that Global Crossing's pattern of behavior identified above violates Section 201(b). Section 201(b) prohibits unreasonable charges and practices in connection with the provision of communications services.²¹ Clearly, Global Crossing's behavior associated with the provision of communications to Petitioners is unreasonable and unlawful. Therefore, Petitioners seek a declaratory ruling affirming the impropriety of Global Crossing's actions. Because the Court did not address this claim and since the FCC holds expertise on this matter, Petitioners have properly asserted their claims before the Commission.

Notably, Global Crossing offers no substantive response to Petitioners' claims regarding its pattern of unlawful behavior. Global Crossing offers a weak reply that its invoices were not inflated but due and payable.²² Therefore, according to Global Crossing, its efforts to collect these charges cannot be unreasonable or unlawful under Section 201(b), and Petitioners' claim must be "pure fiction."²³ Global Crossing's attempted defense is laughable. It assumes the very facts and issues to be determined by the Commission. Mere assertions that claims are fictional cannot defeat substantiated claims with valid evidentiary support. Global Crossing's empty defense must be ignored.

²¹ 47 U.S.C. § 201(b).

²² Global Crossing Comments at 12.

²³ Global Crossing Comments at 12.

B. Violations of Section 203(c)

Global Crossing's inflated charges and unlawful fee assessments violate Section 203(c) of the FCA. Under Section 203(c), "no carrier shall...charge, demand, collect, or receive a greater or less or different compensation, for...communication(s), or for any service in connection therewith...than the charges specified in [any] schedule then in effect."²⁴ Global Crossing contends that Section 203(c) exempts transactions that are permissible through alternate non-tariff contractual agreements.²⁵ In short, Global Crossing maintains that Section 203(c) is inapplicable to non-tariff transactions, and the carrier contract governs Global Crossing's terms and charges.²⁶

This argument fails on two levels. First, Global Crossing again focuses on the MMUCs, excluding Petitioners' remaining arguments regarding the unreasonableness of Global Crossing's actions. Global Crossing essentially argues that the contractual MMUCs govern usage terms and rates and therefore, under Section 203(c), the MMUCs represent the schedule of charges.²⁷ The MMUCs, even if contractually sound, do not escape scrutiny. They are still subject to the test of reasonableness. Further, Section 203(c) implicitly prevents carriers from charging for services that were never rendered.

Second, detariffing eliminated Section 203(c)'s limitation to tariffed services. In other words, carriers remain bound by Section 203(c) despite the Commission's abolition of filing

²⁴ 47 U.S.C. § 203(c).

²⁵ Global Crossing Comments at 13.

²⁶ Global Crossing Comments at 2, 13.

²⁷ See, e.g., Global Crossing Comments at 13, n. 20.

paper tariffs.²⁸ That is, carriers may not charge rates different than those agreed upon for services provided.²⁹ Global Crossing's repeated issuance of inflated invoices and extortion of contract extensions with inflated rates clearly violate Section 203(c)'s proscriptions.

C. Public Policy Concerns

In a desperate final attempt to persuade the Commission to dismiss the Petition, Global Crossing cites public policy concerns purportedly weighing in favor of dismissal. Public policy, however, fully supports the Petition and the Commission's discretion to issue the requested declaratory rulings. Global Crossing asserts again that Petitioners should not be entitled to seek a "second bite at the apple."³⁰ It further argues that underlying carriers will likely not make investments or provide rate concessions to their wholesale customers if they are unable to negotiate usage commitments in exchange. Again, Global Crossing focuses only on the MMUCs and interjects public policy considerations that are not relevant. Of course the Commission seeks resolution of matters as quickly as possible and will exercise its authority

²⁸ *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003). First, tariffs are themselves but contracts, and carrier-to-carrier agreements are no different for purposes of Title II of the Act, as witnessed by Congress's providing for FCC oversight under Section 211. And, tariffs are contracts that the FCC may oversee so that tariffs are not used to unfairly disadvantage the customer subject to their terms. "A tariff amounts to a binding contract between the utility and its customers," See 64 Am. Jur. 2d Public Utilities § 61, citing, *Grant v. Southwestern Electric Power Co.*, 20 S.W. 3d 764 (Tx. 2000) (overruled on other grounds); see, e.g., *Wisconsin End-User Gas Ass'n v. Public Service Commission of Wisconsin*, 581 N.W.2d 556 (Wisc. 1998).

²⁹ The FCC's Detariffing Order makes clear that carriers were not relieved of their obligations mandated by Sections 201 and 202 of the Act. See *Boomer v. AT&T*, 309 F.3d 404 (7th Cir. 2003). The *Boomer* court held that the Act demonstrates a Congressional intent that customers of telecommunications services receive uniform terms and conditions of service. "Sections 201 and 202, read together, demonstrate a congressional intent that individual long-distance customers throughout the United States receive uniform rates, terms and conditions of service." See *id.* at 418.

³⁰ Global Crossing Comments at 15.

only when necessary to do so. And of course the FCC will not tolerate requests to revisit settled issues of law and fact. But those policies are unrelated to this Petition. Crossing's assertions are a smoke screen to hide its practices from the scrutiny of the expert body on carrier practices. Global Crossing's practices affect a significant segment of the competitive industry, not just Petitioners. It is regrettable that only one other carrier submitted comments about Global Crossing practices, because many more carriers have been subjected to the same harm. In some cases that harm has caused its victims to cease doing business and hence have no means by which to bring their experiences to the attention of the Commission.

Global Crossing seeks to prostitute public policy to serve its unlawful conduct and practices. It fancifully declares that it and other carriers would cease to invest in rate concessions if they cannot offer MMUCs. But Petitioners do not seek to bar the use of reasonable minimum charges, they seek to have declared as violations of law the manipulation of such charges to punish customers, extract onerous concessions, reap windfall profits and eliminate smaller carriers from the marketplace. The Commission is tasked with enforcing the mandates of the FCA and supporting fairness in the provision of communications services. Should the Commission choose to dismiss the Petition, which clearly outlines instances of unfair and unlawful practices in the provision of telecommunications, the public would seriously doubt the Commission's commitment to its stated goals of increasing competition. Further, dismissal would encourage underlying carriers to engage in unfair business practices similar to Global Crossing's pattern of behavior without fear of retribution. As illustrated by the Petition and the comments filed by Excite, the allowance of such behavior results in increased costs for resellers, the reduction of competition by harming resellers' ability to

provide services, and increased costs to consumers. Encouraging such practices is clearly contrary to public policy and the public interest which the Commission must guard and protect.

V. Industry Impact of Global Crossing's Unlawful Practices

Excite submitted comments supporting Petitioners' request for declaratory rulings relating to Global Crossing's unlawful practices. Excite recites tales of improper and unlawful practices by Global Crossing. Excite describes Global Crossing's refusal to honor agreements and to properly process billing disputes, assessment of invalid charges, and overall unreasonableness in its performance of contracts with Excite.³¹ Other instances of Global Crossing's issuance of inflated invoices, broken promises to transfer account balances, unilateral rejection of billing disputes and failure to follow dispute procedures exist.

Excite's experiences with Global Crossing demonstrate that Global Crossing's improper business practices in its dealings with Petitioners were not isolated occurrences. Global Crossing's actions are not customer-specific but industry wide. Thus, this matter extends far beyond the Petition as it applies to Petitioners, but implicates other participants in the telecommunications resale industry. Due to the widespread impact of rulings on this matter, the Commission should carefully review and consider the issues presented.

VI. Conclusion

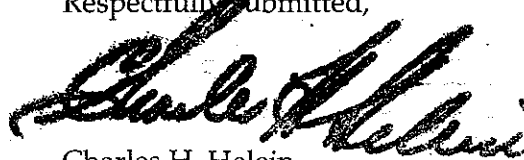
For the foregoing reasons, Petitioners, OLS, Inc. and TeleUno, Inc., respectfully request declaratory rulings that:

³¹ *In the Matter of Petition of OLS, Inc. and TeleUno, Inc. for Declaratory Ruling on Application of Sections 201(b) and 203(c) to Carrier Practices and Charges*, WC Docket No. 09-28, Comments of Excite Telecom, Inc., filed Sept. 1, 2009.

- (1) An underlying carrier's practices, including demands for payments of disputed amounts unilaterally rejected without basis and in violation of expressly agreed to dispute procedures, repeated use of threats to disconnect its services unless invalid charges are paid, promising forgiveness of the invalid charges for agreement to enter into additional term commitments, and the assessment of minimum charges despite the payment of all charges for which service was rendered that in the aggregate over the performance of the agreement for its full term exceeded the minimum charges, violate the prohibition against unreasonable practices charges under Section 201(b) of the Federal Communications Act ("FCA");
- (2) Minimum Monthly Usage Charges ("MMUCs") that are imposed despite the payment of all charges for which service was rendered and that in the aggregate, over the performance of the agreement for its full term, exceed the minimum charges based on fractional portions of the term violate Section 201(b)'s prohibition against unreasonable and unjust charges; and
- (3) The billing and collection of invalid charges and charges for which no service is rendered violate Section 203(c)'s provisions that no carrier may charge, demand, collect, or receive compensation for communications services except as specified in its schedule of charges (contract) or employ or enforce any classifications, regulations, or practices affecting such charges except as specified in its schedule of charges (contract). In addition, whether such practices also constitute separate violations of Section 201(b)'s prohibition against unreasonable practices.

And, as also set forth above, in the interest of justice, OLS, Inc. and TeleUno, Inc. further request the Commission issue the above declaratory rulings on an expedited basis.

Respectfully submitted,



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Allison D. Rule
Jacqueline R. Hankins
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McLean, Virginia 22101
Tel: 703-714-1301
Fax: 703-714-1330
E-mail: chh@commllawgroup.com

EXHIBIT A

From: Gentilcore, Victoria
 Sent: Tuesday, December 07, 2004 1:10 PM
 To: Oliver, Becky; Jenkins, Cody
 Cc: Juroe, Peter
 Subject: Carrier Credit Request for Final Approval - Tracker # 7682 and 6248 Ols Inc 0204189475

Importance: High

Cody/Becky,

Please review and advise your approval for these two related trackers... I am asking
 If you need further detail - please review the tracker record.

Customer Name: Ols Inc
 Association: OLT2
 Account Number : 0204189475
 Billing Cycle: LEXM 27
 Tracker Number: 7682 and 6248 (related)
 Customer Regional Alignment: NA - Carrier East
 Credit Amount: \$397, 892.05

#7682
 1 Adj Amount: \$177,137.02
 1 Adj Functional Area: Offer and Product Mgmt
 1 Adj Root Cause: Rounding
 1 Adj Revenue Code: 0000 - Default (no choice)

#6248
 Adj Amount: \$204,420.96
 1 Adj Functional Area: Sales
 1 Adj Root Cause: Mthly Usage Guarantee/Shortfall
 1 Adj Revenue Code: 0000 - Default (no choice)
 2 Adj Amount: \$16,334.07
 2 Adj Functional Area: Sales
 2 Adj Root Cause: Late Payment Charge
 2 Adj Revenue Code: <<None>>

#7682

6248 Description of Dispute: Ols is disputing the listed MMUC's and LPC's below.

Monthly Minimum Dispute
 February \$77336.89
 March \$75265.24
 April \$20602.53
 May \$26936.08
 June \$ 4280.22
 Total MMUC's in dispute \$204,420.96

GC/OLS001851

Late Payment Charges
 August \$1558.99

September \$1218.80
October \$1962.30
November \$4695.81
December \$6898.17
Total LPC's in dispute \$16,334.07

Total Dispute amount \$220,755.03

9-16-04

Customer was required to A) Draw up a new contract for TeleUno and B) Extend their agreement. Customer has completed this back on Amendment #4. A new contract was drawn for TeleUno. Credit is due to customer.

11-09-04

October '03 LPC charge of \$1962.30 was not added. Added amount and recalculated credit.

Assignments:

Sales Manager: Tony Penny/ Joe Cusick

CSM: Amy Miller/ Jim Vito

Contract Admin: Sharon Posadni

Thank you in advance for your time,
Victoria Gentilcore
Program Manager II
585-255-1404 (5-1404)

GC/OLSN01852

From: Jenkins, Cody
Sent: Friday, December 10, 2004 3:27 PM
To: Gentilcore, Victoria; Oliver, Becky
Cc: Juroe, Peter
Subject: RE: Carrier Credit Request for Final Approval - Tracker # 7682 and 6248 Ols Inc 0204189475

approved

-----Original Message-----

From: Gentilcore, Victoria
Sent: Tuesday, December 07, 2004 1:10 PM
To: Oliver, Becky; Jenkins, Cody
Cc: Juroe, Peter
Subject: Carrier Credit Request for Final Approval - Tracker # 7682 and 6248 Ols Inc
Importance: High

Cody/Becky,

Please review and advise your approval for these two related trackers... I am asking
If you need further detail - please review the tracker record.

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2 Adj Amount: \$16,334.07
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2 Adj Root Cause: Late Payment Charge
2 Adj Revenue Code: <<None>>

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Assignments:

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CSM: Amy Miller/ Jim Vito
Contract Admin: Sharon Posadni

Thank you in advance for your time,
Victoria Gentilcore
Program Manager II
585-255-1404 (5-1404)

GC/OLS001854

From: Gentilcore, Victoria
Sent: Friday, December 10, 2004 3:57 PM
To: Carrier Contracts Rochester; Penny, Tony; Miller, Amy E
Cc: Posadni, Sharon; Cusick, Joe; Jenkins, Cody; Vito, James; Cooper, Oliver
Subject: Carrier Approved Credit Notification - CM request (2) 7682 and 6248 Ols Inc 0204189475

FULLY APPROVED CREDIT/DEBIT DISTRIBUTION (2)

Sales/Support:

Please submit an CS135 Initiation Form to Contract Administration. The credit will not be released to Billing for application to the customer's invoice until the Credit Memorandum has been fully executed and distributed by Contract Administration.

Please note: Customer's account must be current in order for this credit to be applied to it's account.

Customer Name: Ols Inc
 Association: OLT2
 Account Number : 0204189475
 Billing Cycle: LEXM 27
 Tracker Number: 7682 and 6248 (related)
 Customer Regional Alignment: NA - Carrier East
 Credit Amount: \$397,892.05

7682

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 1 Adj Root Cause: Rounding
 1 Adj Revenue Code: 0000 - Default (no choice)

6248

Adj Amount: \$204,420.96
 1 Adj Functional Area: Sales
 1 Adj Root Cause: Mthly Usage Guarantee/Shortfall
 1 Adj Revenue Code: 0000 - Default (no choice)

2 Adj Amount: \$16,334.07
 2 Adj Functional Area: Sales
 2 Adj Root Cause: Late Payment Charge
 2 Adj Revenue Code: <<None>>

GC/OLS001855

7682

Description of Dispute: Ols is stating that Global Crossing was applying incorrect rates to their OLT2 association. Both inter and intra state rates. Dispute is totaling over \$177k. Dates of dispute Feb. 2003 to August 2003.

We need billing to verify that OLS was indeed billed the correct rates during this time period.

*****10-28-04

Billing has verified that the rates for OLS2/OLT2 were and are accurate. Through this process we discovered that their average rate per minute was very high b/c of the amount of short duration calls they had and we were also billing them at a penny minimum. Penny minimum was not part of their (Ols's) contract. We did a re-rate for OLT2 for the month of August 2003 to determine the credit that would be owed to OLS. The re-rate was to switch them to 4 decimal billing. The report is attached to tracker that billing did for us. The credit dollar amount that was verified by billing was \$23,268.73. Customer calculated \$23,274.30. This credit amount is for Dedicated Interstate only. Given the accuracy of the customers calculated credit amount we have agreed to go forward w/using their credit amounts for the months in dispute which were Jan '03 to Sep

'03. Dollar amounts are as follows:

Interstate Credit Amount:

Jan' 03	\$13,837.35
Feb' 03	\$18,678.72
Mar' 03	\$19,795.40
Apr' 03	\$26,846.44
May' 03	\$17,011.13
Jun' 03	\$16,143.88
Jul' 03	\$15,295.05
Aug' 03	\$23,274.30
Sep' 03	\$23,197.94

Total credit request for ded inter \$174080.21

Intrastate Credit Amount:

Jan' 03	\$ 427.01
Feb' 03	\$ 723.65
Mar' 03	\$ 392.00
Apr' 03	\$ 31.53
May' 03	\$ 535.17
Jun' 03	\$ 410.08
Jul' 03	\$ 100.76
Aug' 03	\$ 436.61

Total credit request for ded intra \$3,056.81

Total credit amount \$177,137.02

Please note that this dispute was previously logged before under the following trackers.

6050
6051
6052
6053
6055
6057
6058
6059
6060
6061
6062
6063
6065
6773

These were all closed as billing confirmed that we were rating them correctly. I have attached all cs120's from these trackers.

6248 Description of Dispute: Ols is disputing the listed MMUC's and LPC's below. Customer has signed amendment to extend the term of their contract in exchange. Amendment #4 was initiated to decrease the monthly minimum charge to \$150,000.00 but also extended the term 12 months. Original contract value was for \$8,350,000.00, customer billed \$6,800,932 for that time period. Value of amendment #4 \$1,650,000.00. Executed amendment will keep contract whole.

Monthly Minimum Dispute

February	\$77336.89
March	\$75265.24
April	\$20602.53
May	\$26936.08

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June \$ 4280.22
Total MMUC's in dispute \$204,420.96

Late Payment Charges
August \$1558.99
September \$1218.80
October \$1962.30
November \$4695.81
December \$6898.17
Total LPC's in dispute \$16,334.07

Total Dispute amount \$220,755.03

9-16-04

Customer was required to A) Draw up a new contract for TeleUno and B) Extend their agreement for OLS in exchange for the credit of MMUC's and LPC's.

Customer has completed this back on Amendment #4. A new contract was drawn for TeleUno and w/Amendment #4 being executed this extended their agreement.

Credit is due to customer.

11-09-04

October '03 LPC charge of \$1962.30 was not added. Added amount and recalculated credit

Distro:

Sales Manager: Tony Penny/ Joe Cusick

CSM: Amy Miller/ Jim Vito

Contract Admin: Sharon Posadni

Thank you in advance for your time,

Victoria Gentilcore

Program Manager II

585-255-1404 (5-1404)

GC/OLS001857